



Cape Elizabeth Town Council

Minutes Monday, February 13, 2023

7:00 p.m.

Town Hall Council Chambers

Jeremy A. Gabrielson, Chair
Nicole Boucher
Susan A. Gillis
Caitlin R. Jordan
Penelope A. Jordan
Gretchen R. Noonan
Timothy S. Reiniger

The meeting was convened at 7:00 p.m. by Chair Jeremy A. Gabrielson.

Roll Call by the Town Clerk

All members of the town council were present.

Angela S. Frawley, Deputy Town Clerk
Matthew E. Sturgis, Town Manager

The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Ordinance Committee Chairman P. Jordan reported on the February 9th LD 2003 Informational Night, citing that there were approximately 50 attendees. She anticipates having more information for the April council meeting.

Councilor Reiniger spoke to amending, and clarifying, the school building committee charge. He is requesting a motion for reconsideration.

Chair Gabrielson requests that the amendments are shared with the school board, and he prefers to take this up on the March agenda.

Councilor C. Jordan reminded the council that they cannot vote on amending the charge unless it is noticed on the agenda, so that the public is notified beforehand.

Finance Committee Report

Finance Chair Boucher reviewed the financial dashboard through 1/31/2023, noting that the PHL gift shop has already surpassed this year's revenue target.

Councilor P. Jordan inquired about the public works vehicle maintenance line, and Town Manager Sturgis responded with explanation, and also offered that the Police overtime line should flatten out as two new officers have been hired.

Citizen Opportunity for Discussion of Items Not on the Agenda

No comments.

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Town Manager's Monthly Report
Matthew E. Sturgis, Town Manager

On February 4, I attended the Maine Association of Police annual awards banquet. It was a great honor, as at the banquet the Cape Elizabeth Police Department received a number of outstanding honors. Chief Paul Fenton received the David W. Pickering Chief's Award for Chief of the Year, Sergeant Rory Benjamin received both the Heroism Award and the Lifesaving Award, Student Resource Officer David Galvan received the School Resource Officer of the Year Award, and former Cape Elizabeth Patrolman Arron Webster received the Lifesaving Award. A very proud moment for the Town and the Department.

Staff is continuing discussions on the engineering and design for Shore Road improvements, and continue to explore funding options through both State and Federal resources.

Staff performed a site walk at the Recycling Center earlier this week with our solar power installation partners in advance of their site plan approval process with the Planning Board next month. At this point the project has presented their first meeting in January, will begin Site Plan Review in March, and an anticipated approval in April, with construction planned for late summer / early fall, and completion by the end of fall, early winter.

Town Planner Maureen O'Meara and I met with State Senator Anne Carney, a representative of the Maine DOT, and a Cape Elizabeth resident to explore the possibility of a sidewalk on Ocean House Road, and discussions will continue to explore planning, engineering, and construction funding opportunities.

Finally, construction repairs continue at the Community Services building to correct the damages incurred from water damage over the Christmas holiday weekend.

Review of Draft Minutes January 9, 2023

Moved by Councilor Noonan and Seconded by Councilor Boucher

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting held on January 9, 2023 as written.

(7 yes) (0 no)

Consent Calendar Item #33-2023 – Item #34-2023

Councilor Boucher requested the items be considered separately.

**Item #33-2023 Request for Use of Fort Williams Park – South Portland Cape Elizabeth
Rotary Club – Fireworks Display on March 4, 2023**

Councilor Boucher is requesting there be notification to residents that reside in the area of the fireworks.

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Moved by Councilor C. Jordan and Seconded by Councilor Boucher

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Park Committee for the South Portland Cape Elizabeth Rotary Club to have fireworks in Fort Williams Park on Saturday, March 4, 2023 as presented. In case of inclement weather, the alternate date is March 11.

(7 yes) (0 no)

Item #34-2023 Requests for Use of Fort Williams Park for 2023

Moved by Councilor C. Jordan and Seconded by Councilor Boucher

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Park Committee to approve the following 2023 Group Use requests for Fort Williams Park as presented:

Cape Elizabeth Little League, 2023 Season, Opening 3/19/2023 (field consideration)

Cape Elizabeth High School Graduation, Sunday, June 4, 2023

Cape Elizabeth Family Fun Day, Saturday, June 17, 2023

Friends of Fort Williams Garden Tour, Saturday, July 15, 2023

Making Strides Against Cancer Walk, Sunday, October 15, 2023

(7 yes) (0 no)

Public Hearing Proposed Amendments to the Remote Participation Policy

Chair Gabrielson opened the public hearing at 7:26 p.m.

John Voltz, 33 Philip Road commented and urged the council to look to see how far they could go with remote participation, and suggested that the remote participation amendment be put into the Council goals.

After hearing no further comments the hearing was closed at 7:29 p.m.

Item #35-2023 Consideration of Proposed Amendments to the Remote Participation Policy

Moved by Councilor Gillis and Seconded by Councilor Reiniger

ORDERED, the Cape Elizabeth Town Council approves the recommended changes to the Remote Participation Policy effective immediately.

(7 yes) (0 no)

See attachment.

Item #36-2023 Nomination of Spirit of America Award Recipient

Public Comment

Carol Ann Jordan, 21 Wells Road spoke in support of this nomination.

Estelle Margarones, Senior Pastor, First Congregational Church, 301 Cottage Road, South Portland spoke in favor of this nomination.

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Moved by Councilor Noonan and Seconded by Councilor Boucher

ORDERED, the Cape Elizabeth Town Council nominates Kenneth S. "Scott" Berry, 4 Mares Hollow Road, for the 2023 Spirit of America Award.

(7 yes) (0 no)

Item #37-2023 Update from the Cape Community Arena Regarding the Ice Arena Season

Scott Liston, 2 Keyes Lane, provided an update on the community ice rink. Mr. Liston reported that they are averaging 6 hours of use per day. Highlighted that the girls JV hockey team, and other Cape hockey teams have been able to practice daily. The cost has been, expectedly, 20k monthly (10k in energy costs, 10k for chiller and other maintenance items), noting that this equates to about three hours of ice rental per day. On March 10th, the chiller will be discontinued. Mr. Liston noted that it is direct sunlight that cuts the usage short. The group is anticipating a November 1, 2023 opening date.

Councilor Boucher questioned Mr. Liston, how many hours are the volunteers contributing? How many people have subscribed to text/email alerts for the ice rink? Councilor Boucher also suggested possible placement of a donation box.

Mr. Liston explained there are approximately 65 volunteers at the rink, and that they staff the rink 6 hours daily with a volunteer. He asked to research and then respond to Councilor Boucher's inquisition regarding text/email alerts.

Councilor Boucher questioned Town Manager Sturgis, have there been any traffic complaints relating to the ice rink?

Town Manager Sturgis reported no complaints.

Councilor Reiniger questioned Mr. Liston, has the location met the group's expectations?

Mr. Liston responded that it does meet their expectations, parking has been manageable, but sometimes visitors have difficulty finding it as it isn't well lit. He also noted that better bathroom facilities would help.

Item #38-2023 Request for Use of Fort Williams Park – Beach to Beacon Road Race on August 5, 2023

Town Manager Sturgis corrected the \$35,700 fee to \$32,700 fee.

David Backer, President of TD B2B, 25 Drew Road, South Portland, spoke to the intent for a beer garden at the event, sponsored by Shipyard Brewery. Mr. Backer explained that it is a 9:00 a.m. - 11:45 a.m. celebratory offering in the large tent at the parade grounds. ID is required, and the tent is cordoned off and secure.

Bruce Forsley, President of Shipyard Brewing Company, added that they carry liability insurance and their servers are all TIPS certified. Shipyard is offering to donate all proceeds to the 2023 race beneficiary.

Councilor Boucher posed questions around the safety of the event.

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Moved by Councilor P. Jordan and Seconded by Councilor Reiniger

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Park Committee to approve the use of Fort Williams Park for the Beach to Beacon 25th Anniversary Road Race on Saturday, August 5, 2023 as presented, the 2023 fee rate structure of \$32,700, and the request for a beer garden post-race based on the strict guidelines as presented.
(7 yes) (0 no)

**Item #39-2023 Recommendation from the Joint Appointments Committee to Appoint
Citizens to the Ad Hoc School Building Advisory Committee**

Councilor Gillis read a statement from Kathleen Curry-Sparks.
Councilor P. Jordan questioned the intent of alternates. Clarified by Councilor Gillis.

Moved by Councilor Gillis and Seconded by Councilor Boucher

ORDERED, the Cape Elizabeth Town Council affirms the recommendations of the Joint Appointments Committee of the Town Council and School Board to appoint five public members to the ad hoc School Building Advisory Committee. In the event any of the five are not able to serve, three alternates have been identified.
David Andrews, Corinne Bell, Patrick Cotter, Michael Hussey, Larry Benoit
Alternates: Piotr Stamieskin, David Hughes, Jeremy Law
(7 yes) (0 no)

**Item #40-2023 Consideration of Funding for a Sawyer/Spurwink March NFWF Grant
Application**

Town Manager Sturgis provided an update, and discussed that changes to the grant could be made to receive a better chance at grant funding.

Councilor P. Jordan expressed concerns about traffic pattern flow, and that she would like to have more information about the study.

Moved by Councilor Boucher and Seconded by Councilor Noonan

ORDERED, the Cape Elizabeth Town Council authorizes the expenditure of \$35,000, from unassigned fund balance, as a cash match for an application to the National Fish and Wildlife Foundation/National Coastal Resilience Fund for a grant to restore habitat as part of removal of the portion of Sawyer Road/Street located in the Spurwink Marsh. Said cash match is also recommended from the Town of Scarborough.
(7 yes) (0 no)

**Item #41-2023 Consideration of Tasking the Energy Committee in Proposing Steps
Toward Determining Climate Action Goals**

Public Comment

John Voltz, 33 Philip Road supports the recommendation.

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Moved by Councilor Boucher and Seconded by Councilor Noonan

ORDERED, the Cape Elizabeth Town Council tasks the Energy Committee to perform a review of Maine Won't Wait, the State of Maine's climate action plan and make recommendations to the Cape Elizabeth Town Council on a Town climate action plan. Additionally, to encourage coordination where applicable with other Town boards and committees regarding implementation of climate change initiatives.

(7 yes) (0 no)

Item #42-2023 Consideration of 2023 Town Council Goals

Public Comment

John Voltz, 33 Philip Road encouraged Council to set goals now and then amend in the future. Also asked that the council add a link to the One-Town Concept for transparency sake.

Councilor Boucher requested a correction on the title of the goals document.

Councilor P. Jordan commented that some editing/proofreading was needed.

Moved by Councilor Reiniger and Seconded by Councilor C. Jordan

ORDERED, the Cape Elizabeth Town Council approves the 2023 Town Council Goals with minor edits.

(7 yes) (0 no)

See attachment.

Item #43-2023 Appointment of Town Attorney

Five proposals were received, 2 firms were interviewed, and the Town Manager recommends Bernstein Shur.

Councilor Reiniger expressed that he has had residents express concern over possible conflict of interest with a firm member that serves on the school board.

Ann Freeman, attorney at Bernstein Shur, commented and assured the council that appropriate measures will always be taken to evaluate the matter at hand.

Councilor Boucher spoke in favor of the material Bernstein Shur provided, as part of the interview process.

Moved by Councilor Boucher and Seconded by Councilor Gillis

ORDERED, the Cape Elizabeth Town Council appoints Bernstein Shur to provide municipal legal services to the Town of Cape Elizabeth and authorizes the Town Manager to sign a letter of engagement.

(7 yes) (0 no)

See attachment.

Item #44-2023 Town Manager's Contract

Chair Gabrielson thanks the Manager for his continued service.

Councilor Reiniger requested general comments to be made, for the public benefit and understanding, regarding the contract.

Moved by Councilor P. Jordan and Seconded by Councilor C. Jordan

ORDERED, the Cape Elizabeth Town Council accepts the Employment Agreement with Matthew E. Sturgis as Town Manager through January 29, 2026 and further authorizes the members of the Town Council to sign the contract on behalf of the Town.

(7 yes) (0 no)

See attachment.

**Item #45-2023 Consideration of Scheduling a Public Hearing Regarding a Citizens
Petition Relating to the Enactment of a Residential Pesticide Use
Ordinance**

Chair Gabrielson and Town Manager Sturgis commented and explained the Council's task during the 30 day window.

Nick Bryant, 55 Spurwink Avenue, primary drafter of the petition, commented that the goal was for either the council to approve the ordinance or push it to referendum vote in June. He also explained that the council could "tweak" the ordinance if the intent was maintained.

Moved by Councilor C. Jordan. Seconded by Councilor P. Jordan.

ORDERED, the Cape Elizabeth Town Council sets to public hearing, pursuant to the Council-Manager Charter Article III Initiative and Referendum Sec. 3 Petition for enactment of ordinance, a citizen petition filed with the Town Clerk on February 10, 2023 entitled Petition for Enactment of Cape Elizabeth Residential Pesticide Use Ordinance on March, 1, 2023 at the Cape Elizabeth Town Hall provided a sufficient number of signatures have been verified by the Town Clerk.

(7 yes) (0 no)

Citizens may at this point in the meeting raise any topic that is not on the agenda that pertains to Cape Elizabeth local government.

John Voltz, 33 Philip Road, commented again on the importance of transparency with the One-town concept.

Nick Bryant, 55 Spurwink Avenue, also commented, reinforcing Ann Freeman's explanation of how conflicts of interest are handled by attorneys and the seriousness of them.

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Adjournment

Moved by Councilor C. Jordan and Seconded by Councilor P. Jordan
ORDERED, the Cape Elizabeth Town Council adjourns at 9:35 p.m.
(7 yes) (0 no)

Respectfully Submitted,

Angela S. Frawley, Deputy Town Clerk

REMOTE PARTICIPATION POLICY
Adopted by the Cape Elizabeth Town Council
August 30, 2021
Amended February 13, 2023

Town of Cape Elizabeth

Pursuant to 1 M.R.S. § 403-B and after public notice and a hearing held on ~~August 30, 2021~~ February 13, 2023 the Cape Elizabeth Town Council adopts the following policy effective immediately to govern the participation, via remote methods, of members of the Town Council, Planning Board and Board of Zoning Appeals, boards and committees and the public in the public proceedings or meetings of the body.

Members of the Body

When technology is available hybrid meetings will become available. The Town Council, Planning Board and Board of Zoning Appeals will provide remote participation for members of the body in certain circumstances as outlined in this policy when the technology is available and operational in the given meeting space.

Boards and committees may provide remote participation for members of the body under certain circumstances as outlined in this policy when the technology is available and operational in the given meeting space.

Members of the body are expected to be physically present for meetings except when not practicable, such as in the case of an emergency or urgent issue that requires the body to meet via remote methods, or an illness or temporary absence of a member that causes significant difficulty traveling to the meeting location. The chair, in consultation with the town manager, or if applicable the board staff member or other members if appropriate and possible, will make a determination that remote methods of participation are necessary in as timely a manner as possible under the circumstances. A member who is unable to attend a meeting in person will notify the chair, and/or town manager or if applicable the board staff member as far in advance as possible.

Remote Methods

Remote methods of participation may include telephonic or video technology allowing simultaneous reception of information and may include other means necessary to accommodate disabled persons. Remote participation will not be by text-only means such as e-mail, text messages, or chat functions.

Public

The public will be provided a meaningful opportunity to attend via remote methods when ~~any member of the body participates via remote methods~~ hybrid technology is available and operational in the given meeting space. If public input is allowed or required at the meeting, an effective means of communication between the body and the public will also be provided. The public will also be provided an opportunity to attend the meeting in person unless there is an emergency or urgent issue that requires the entire body to meet using remote methods.

Notice

Notice of all meetings will be provided in accordance with 1 M.R.S. § 406 and any applicable charter, ordinance, policy, or bylaw. When the public may attend via remote methods, notice will include the means by which the public may access the meeting remotely and will provide a method for disabled persons to request necessary accommodation to access the meeting. Notice will also identify a location where the public may attend the meeting in person. The body will not restrict public attendance to remote methods except in the case of an emergency or urgent issue that requires the body to meet using remote methods of attendance.

The body will make all documents and materials to be considered by the body available, electronically or otherwise, to the public who attend remotely to the same extent customarily available to the public who attend in person, provided no additional costs are incurred by the body.

Votes

All votes taken during a meeting using remote methods will be by roll call vote that can be seen and heard if using video technology, or heard if using audio technology only, by other members of the body and the public. A member of the body who participates remotely will be considered present for purposes of a quorum and voting.

Disruption of Service

Remote participation is offered as a convenience. In the event there is a disruption in service and the communication can't be restored the expectation is the meeting will continue. In the event the number of members of the body participating remotely are needed for a quorum the meeting will be adjourned for lack of a quorum and reconvened at a date to be determined.

This policy will remain in force indefinitely unless amended or rescinded.

This policy will be reviewed annually at the Town Council's organization meeting in December.

Attachment Item #42-2023 February 13, 2023 Approved

Town Council Goals – See copy attached to minutes.



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774 - 1200

F (207) 774 - 1127

Mary E. Costigan

Shareholder

207-228-7147 direct

mcostigan@bernsteinshur.com

February 3, 2023

Matthew Sturgis, Town Manager
Town of Cape Elizabeth
320 Ocean House Road
Cape Elizabeth, ME 04107

Re: Legal Representation

Dear Matt:

Thank you for selecting Bernstein Shur. We may sometimes refer in this letter to Bernstein Shur as the "Firm," or "we."

The purpose of this letter is to set forth the terms of the Firm's agreement to provide professional services to Town of Cape Elizabeth who we may sometimes refer to in this letter as "you."

The terms stated in this letter form a binding agreement between you and the Firm. Please read this letter carefully. If you have any questions or concerns, please call me. Otherwise, please sign and return this letter in the enclosed envelope or by e-mail to provide us with a written acknowledgement of your agreement to these terms.

Party or Parties Represented

We are being hired to represent Town of Cape Elizabeth.

Our representation of you does not constitute our representation of any affiliate, subsidiary or parent entity or any individual owner, officer, director, shareholder, member, partner or employee, unless we subsequently agree to such representation in writing.

I understand that you should receive our statements for professional fees and expenses via email at the following email address matthew.sturgis@capeelizabeth.org. If this is not accurate, please advise me where our statements may be sent and to whose attention.

Scope of Work

You have hired us to provide legal representation to you with respect to general counsel legal services for the Town of Cape Elizabeth through February 13, 2026. Set forth below is a fixed fee that you have agreed to pay for legal services. The services included within the fixed fee Scope of Services are as follows: advising the Town Council and the Town's boards, departments, and staff; drafting ordinances; attending meetings; general labor and employment advice; contract review; policy review; and answering correspondence. This work shall be defined as the "Scope of Services." Not included in the Scope of Services are any appeals of municipal board decisions to any adjudicatory boards, agencies or courts; litigation; tax increment financing; representation before the Maine Human Rights Commission, the Maine Worker's Compensation Board, the Maine Labor Relations Board, and the Maine Board of Arbitration and Conciliation; labor negotiations which require our presence at the bargaining table or before the MLRB and/or the MBAC; employee disciplinary and termination actions; and bond issues.

In regard to the bond counsel services, we provide a set of fixed fee options for individual bond issues depending on the type of transaction (e.g. Maine Municipal Bond Bank general resolution issues, public sales, direct purchase bank transactions). This way, before the matter is underway, you will know the legal cost and can determine whether to pay the bond counsel fee from bond proceeds or from another source.

This engagement letter provides a description of our expected representation. If our assignment is revised, this will affect our fee quotation. We are pleased to discuss any proposed revisions with you and any required changes in our fee quotation. We will confirm revisions to our scope of work and fees, typically via email.

Conflicts of Interest

Before beginning our representation, we conducted a computerized name check against our client records in order to determine whether a disqualifying conflict of interest exists between our representation of you and our representation of any other clients.

We have not identified any such conflicts at this time. However, during the course of our representation, you should be alert for the development of any new or potential conflict that may arise. Please notify the attorney you are working with at the Firm immediately if you become aware of a conflict or potential conflict. Additionally, for our business purposes, please let us know if you change your company name or acquire any companies or entities so we may update our records. In the event that a conflict arises, we will attempt to resolve it, to the extent permitted by the applicable Rules of Professional Conduct, by making any necessary disclosures and seeking any needed consents from you and any other affected client. In the event that we are unable to

obtain such consent, or that we conclude that we should not continue to represent you in light of the conflict, you agree that we may terminate this representation.

Fees and Expenses

We generally bill for our services on an hourly basis, but in this instance, you have retained us on a fixed fee basis for the Scope of Services. We agree that our fees will be \$62,000 per year through February 13, 2026. We agree that you will pay our fees in twelve (12) equal monthly installments of \$5,166.66. We agree to check-in periodically to discuss the fixed fee amount and the work performed under this agreement to determine if adjustments to the fee are requirement. The parties may adjust the annual fee upon mutual agreement.

Any work performed outside of the Scope of Services for the first year will be billed at \$265 per hour for associates and \$290 per hour for municipal practice group shareholders. As discussed above, any municipal bond counsel services will be negotiated on a fixed-fee basis. In addition, we may be assisted by one of our other attorneys or paralegals who will be billed at their prevailing rates. Professional rates for the firm are generally adjusted annually on January 1 of each year.

Our quotation of a fixed fee is based upon two critical factors. First, you have made known to us the material facts upon which we have based our fee quotation. Second, you have defined the scope of work for which you have engaged us as indicated above. As is the case with any client relationship, in order for it to work, there must be communication about how the relationship is progressing.

Our general overhead is not a client expense. However, expenses directly related to your representation may be incurred and you agree to reimburse us for them. These expenses may include retention of accountants, appraisers, or other non-lawyer professionals in a non-litigated matter or witness fees, investigative costs, or deposition costs in a litigated matter. These are only examples and this list is not exclusive. These expenses are your responsibility whether or not we decide to advance these expenses on your behalf. We may forward the bills for expenses to you for direct payment to the service provider or vendor. Unless the circumstances dictate otherwise, we will ordinarily consult with you before incurring an expense anticipated to exceed \$500.00.

We will bill you \$5,166.66 per month through February 13, 2026, unless otherwise modified in accordance with this agreement, and thereafter by agreement. We will also provide the Town with a summary of our work for each month. Any work which falls outside the Scope of Services shall be billed separately. Payment is due within 30 days of your receipt of our billing statement. We reserve the right to charge a late fee of 1½% per month for all fees and expenses that are not paid from an advance retainer or remitted within 30 days.

Estimates of Fees and Costs or Expressions of Likely Outcome

Any expression on our part concerning the cost or outcome of your matter is an expression of our professional judgment, not a guarantee. Our opinions are necessarily limited by our

knowledge of the facts which may be incomplete and are based on the circumstances at the time they are expressed which may evolve, at times in unpredictable ways. Unless we expressly agree in writing to a maximum or a fixed fee, our projections of fees and costs are not binding upon us.

Confidentiality and the Attorney-Client Privilege

We respect your confidences and are required to protect your confidential information and our communications with you. This professional obligation and the legal privilege associated with attorney-client communications exist to encourage candid and complete communication between us. However, you should be aware that the attorney-client privilege applies only to those communications between a client and a law firm that are made for the purpose of obtaining legal advice. To the extent that your communications with the Firm do not fall within this classification, they may not be privileged. For example, communications with our government relations or public affairs professionals regarding lobbying or public affairs services or with our information technology professionals regarding cybersecurity services may not be covered by the attorney-client privilege.

Additionally, the attorney-client privilege may be waived if communications between us are shared with others or made public. Please discuss with us in advance any plans you may have to share our communications with the public or with persons outside of the Firm, including with other professionals you may have retained to assist you in this matter (e.g., engineers, accountants, or appraisers).

For similar reasons, you must be careful with e-mail communications, texts and communications made by way of various social media. Use care in the choice of the computer you use to communicate with us. If you use a computer at your work or home that may be accessed by others, such as family members or your employer, there is a risk that electronic communications may be read by third parties and/or constitute a waiver of the attorney-client privilege. We will assume that you have considered this when you supply an e-mail address to us and that you have determined that your computer is secure. If you have any concerns, please discuss them with us.

File Retention in Completed Matters

At the conclusion of this engagement, we will scan your file and destroy the paper copy, with the exception of original documents that derive value by being retained in the original form, which will be returned to you. We will retain the scanned image of your file for at least eight years. If you wish for us to return the entire paper file to you, you must expressly notify us of this desire and agree to pay for shipping and handling of the file.

Arbitration and Choice of Law

As a condition of our willingness to represent you in the matter described above under “Scope of Work” we require that you agree to submit any claims that may arise in the future against the Firm for malpractice or any other reason to binding arbitration pursuant to the Arbitration and Choice of Law Agreement attached hereto as **Appendix A**.

Termination of Our Representation

This agreement, except for the arbitration and choice of law provisions, which will survive indefinitely, may be terminated by you or the Firm with or without cause at any time upon reasonable notice and consistent with applicable legal rules of ethics. If we are representing you in a litigated matter, we may be required to seek the permission of a judge or administrative body before we can discontinue our representation. If you terminate our representation or fail to pay our fees after reasonable notice, which we consider a form of termination, you agree to expeditiously locate replacement counsel. We also will consider our representation of you to have ended if we have not been asked to provide any services to you for a 12-month period. If you subsequently engage us to perform further or additional services, the lawyer-client relationship will be reestablished, subject to the terms on which we may agree at that time.

The fact that we might inform you from time to time of developments in the law which might be of interest to you, by newsletter or other means does not constitute performing legal services and will not reestablish a lawyer-client relationship that has terminated by the passage of time or otherwise. Additionally, we assume no obligation to inform you of any developments in the law unless we have been specifically engaged in writing to do so.

In order to avoid any future misunderstandings we ask that you please sign a copy of this letter and a copy of Appendix A in the places indicated and return the signed copies to us. If you have questions or concerns before signing, please call me. In the event that you do not send back signed copies, you will be deemed to have accepted the terms of engagement set forth in this letter and the arbitration agreement set forth in Appendix A if you give us instructions to continue work on this matter after you have received this letter. If you retain us for further work in the future, we may not issue a new engagement letter and, in that case, the terms in this document will continue to apply.

We appreciate the opportunity to be of assistance to you and we look forward to working with you.

Sincerely,



Mary E. Costigan

I UNDERSTAND AND AGREE TO THE TERMS OF THIS LETTER INCLUDING THE ARBITRATION PROVISIONS CONTAINED IN APPENDIX A WHICH REQUIRE ME TO RESOLVE ANY DISPUTE THAT MAY ARISE BETWEEN ME AND THE FIRM THROUGH BINDING ARBITRATION AND NOT BY A TRIAL BEFORE A JUDGE OR JURY:

Town of Cape Elizabeth, Maine

Matthew Sturgis, Town Manager, Town of Cape Elizabeth
Authorized Representative

Date: _____

APPENDIX A

Arbitration and Choice of Law Agreement

READ THIS DOCUMENT CAREFULLY. IT CONTAINS AN AGREEMENT TO SUBMIT ANY CLAIMS THAT MAY ARISE IN THE FUTURE AGAINST THE FIRM FOR MALPRACTICE OR ANY OTHER REASON TO BINDING ARBITRATION.

You agree to resolve all disputes that we may have with each other by way of binding arbitration, at the request of either party, consistent with the terms outlined here, except for disputes regarding our fees for work performed by Maine lawyers which you may instead choose to submit to binding arbitration pursuant to Rule 7 of the Maine Bar Rules.

The arbitration requirement set forth in this Agreement is not limited to fee disputes. It applies to any and all disputes that you choose not to submit to Rule 7 arbitration, including claims that we failed to provide you with competent representation or breached a duty of care that we owe to you.

By signing this Agreement you agree that you will not sue the Firm in a court of law for malpractice or any other reason and that you will, instead, submit any such dispute to binding arbitration.

Arbitration is a private and confidential means of resolving disputes. It is commonplace in commercial settings. Arbitration is an alternative to a public court trial and may more quickly and efficiently resolve disagreements. Either party may request arbitration of any dispute between you and the firm by sending a written demand for arbitration to the other.

In considering whether to agree to the binding arbitration provisions of this Agreement, you should carefully consider the following.

- **By agreeing to arbitration, you will not have access to a jury trial.**
- **An impartial arbitrator, not a judge or a jury, will resolve all disputed facts between us and will apply the law to those facts.**
- **The availability of discovery may be more limited in arbitration and the rules of evidence may be less strictly applied. This means that the parties' ability to obtain documents and take depositions may not be as robust in arbitration and also that an arbitrator may be willing to consider some types of evidence that a court would not be willing to consider.**
- **Additionally, rights to appeal an arbitration decision are much more limited than the appeal rights available in court.**

If we have a dispute and we submit it to arbitration, you and the Firm will attempt to mutually agree upon a neutral arbitrator to resolve the dispute. We agree the arbitrator will apply the American Arbitration Association's rules for the resolution of commercial disputes as they exist at the time of the arbitration with the exception noted below. American Arbitration Association

rules may be found at <https://www.adr.org/Rules>. If the applicable arbitration rules require the parties to share the costs of the arbitration, including the fees of the arbitrator, we each agree to pay half of those costs and fees and we further agree, whether required by the rules of arbitration or not, that the failure to pay arbitration fees or costs in a timely manner shall be considered acts of default that result in an arbitration award to the other party. Each side will bear its own attorney fees and related costs.

If we cannot agree to the selection of an arbitrator within thirty days after one of us formally requests arbitration, you and the Firm agree to hire the American Arbitration Association to fully manage the arbitration of the dispute and we will both abide by their rules for the selection of a qualified arbitrator and for the resolution of the dispute with the exception of the default for non-payment of fees or costs as described in the preceding paragraph.

Any arbitration or court proceeding that may be required to resolve disputes between us shall occur in Augusta, Maine; Portland, Maine; or in Manchester, New Hampshire, whichever is closest to the office location in which the lead attorney involved in your matter works. The procedural and substantive law of Maine or New Hampshire, without reference to its choice of law principles, shall govern the resolution of any dispute between us depending upon the location of the arbitration; i.e., if the arbitration is conducted in New Hampshire, New Hampshire law will apply and if the arbitration is conducted in Maine, Maine law will apply.

IF YOU HAVE ANY CONCERNS REGARDING THE PROS AND CONS OF ARBITRATION VERSUS COURT PROCEEDINGS, YOU ARE ADVISED TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT IN WHICH YOU AGREE TO WAIVE YOUR RIGHT TO COURT PROCEEDINGS, INCLUDING WAIVER OF A TRIAL BEFORE A JUDGE OR JURY.

I UNDERSTAND AND AGREE TO THE TERMS OF THIS ARBITRATION AND CHOICE OF LAW AGREEMENT WHICH REQUIRES ME TO RESOLVE ANY DISPUTE THAT MAY ARISE BETWEEN ME AND THE FIRM THROUGH BINDING ARBITRATION AND NOT BY A TRIAL BEFORE A JUDGE OR JURY:

Town of Cape Elizabeth, Maine

Date: _____

Matthew Sturgis, Town Manager, Town of Cape Elizabeth
Authorized Representative

TOWN OF CAPE ELIZABETH

EMPLOYMENT AGREEMENT

WHEREAS, the Town of Cape Elizabeth, a municipal corporation duly organized and existing under the laws of the State of Maine, (hereinafter Town), by and through its Town Council (hereinafter Council), desires to retain the services of Matthew E. Sturgis, (hereinafter Manager) to serve as Town Manager, and

WHEREAS, Matthew E. Sturgis desires to accept employment as Town Manager, and the undersigned desire to reduce the terms of employment to writing;

NOW, THEREFORE, in consideration of the mutual covenants herein, the undersigned agree as follows:

1. **Obligation** - The Manager shall perform the functions and duties as set forth in applicable state statutes, including but not limited to 30-A MRS §2636 and the Cape Elizabeth Council-Manager Charter, Article III and the Town Code of Ordinances as the same currently exist or may be amended and such other legally permissible and proper duties and functions as the laws may impose or the Council may assign. The Manager agrees to well and faithfully serve the Town in said capacity and to devote his time, attention and energies to the performance of his duties hereunder to the best of his ability.
2. **Term** - The Town agrees to employ the Manager for a three (3) year term beginning January 30, 2023 and continuing until January 29, 2026 unless terminated pursuant to the terms of this Agreement or unless a specific term is provided for by a subsequent amendment to this Agreement. The Manager agrees to provide the Town with a minimum 45 days advance notice of his intention to terminate this agreement. The Council agrees to provide the Manager notice of their intention to commence negotiations for a successor agreement not less than ninety (90) days prior to expiration of this agreement.
3. **Performance Evaluation** - The Council shall provide the Manager with periodic opportunities to discuss Council-Manager relations and the performance of the Manager. As a minimum, the Council shall conduct an annual performance evaluation.
4. **Salary** - The Town agrees to pay the Manager for services provided pursuant to this Agreement a gross salary of One Hundred Forty Seven Thousand Dollars (\$147,000) per year commencing on January 30, 2023. The Manager's salary shall be adjusted upward 3% annually with the completion of a successful performance evaluation. The salary hereunder is payable at the same time and in the same manner as other employees of the Town. The Council and the Manager agree that a formal written evaluation of the Manager's performance as well as progress made on the list of goals and objectives, will serve as the primary determining factor in compensation increases.

5. **Termination** - If the Manager is terminated without cause, the Town shall provide a minimum severance payment equal to one (1) month per year of service up to a maximum of six (6) months' severance. This severance must be paid in a lump sum. Other options may be agreed upon by the Manager and the Council. If the Manager is terminated because of a conviction of any illegal act, then the Council is not obligated to pay severance under this section. Termination with cause will be in accordance to Cape Elizabeth Town Charter and Maine State Statutes.

6. **Retirement**- The Town agrees to match the Manager's contribution up to 11.5% of the Manager's base salary into the International City Management Association Retirement Corporation, said amount on behalf of the Manager.

7. **Health Insurance** - The Town will provide medical insurance coverage offered by the Town, currently through the Maine Municipal Employees Health Trust, for the Manager and family. The Town will pay 80% of the premium for the medical insurance policy offered by the Town.

8. **Vacation** - The Town will provide twenty-four (24) days of vacation per year commencing on the date of this agreement. A maximum of ten (10) days may be carried over from one year to the next on the Manager's anniversary date.

9. **Sick Leave** - The Manager shall accumulate one (1) day per month for each month of employment up to a maximum of one hundred forty (140) days. The Manager will also be allowed to carry over sick leave earned as Assessor for the Town.

10. **Cell Phone** - The Town will provide a cell phone stipend of \$90.00 per month for the term of this contract.

11. **Automobile Allowance** - The Manager will be provided with an automobile allowance of \$400.00 per month in consideration of which he shall be responsible to provide his own transportation for all work related automobile travel. Throughout the term of employment, the Manager shall secure, and provide the Town with proof of automobile liability insurance with limits not less than:

- \$500,000 combined single limit OR
- \$250,000 for each person and
- \$500,000 each occurrence and
- \$250,000 property damage

Limits may be achieved by a primary policy or by a primary policy plus umbrella policy.

12. **Other Benefits** - The Manager shall also be eligible to receive any other benefits as the Town provides to its other employees.

13. **Public Official Liability Insurance** - The Town shall provide the Manager with Public Official Liability Insurance and any Bond required of the Town Manager, or any other position filled by the Town Manager subject to the provisions of State Statute, Town Charter and Town Ordinances.

14. Professional Dues and Professional Development- The Town hereby agrees to pay for the following expenses of the Manager for professional meetings and training programs: Membership dues and Annual Meeting of the International City Manager's Association (ICMA) and membership dues and meeting attendance at the Maine Town and City Manager's Association (MTCMA). Attendance at any other professional associations that the Manager and the Council deem to be in the best interests of the Town, are subject to Council approval.

15. General Provisions-

- A. Except as expressly stated or otherwise provided for in this Agreement, the Manager is governed by the same customs, practices and policies governing other employees of the Town.
- B. The parties acknowledge and agree that this Agreement was freely negotiated and entered into, and that in the event of a conflict between the provisions hereof and the provisions of any law or ordinance, the provisions of this Agreement prevail.
- C. This Agreement may be amended or modified only in writing.
- D. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or portion thereof, is not affected thereby, and remains in full force and effect.
- E. The provisions of this Agreement are governed by Maine law.

IN WITNESS WHEREOF, THE Town of Cape Elizabeth has caused this Agreement to be duly signed and executed on its behalf by the Council and Matthew E. Sturgis has signed and executed this Agreement on the 13th day of February, 2023.

TOWN OF CAPE ELIZABETH

Matthew E. Sturgis

Jeremy A. Gabrielson, Council Chair

Nicole Boucher, Councilor

Susan A. Gillis, Councilor

Caitlin R. Jordan, Councilor

Penelope A. Jordan, Councilor

Gretchen R. Noonan, Councilor

Timothy S. Reiniger, Councilor

Attest: Debra M. Lane, Town Clerk